

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

STEVEN MELEIKA,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:21-1539
	:	
v.	:	(JUDGE MANNION)
	:	
MONROE COUNTY, PA,	:	
	:	
Defendant	:	

ORDER

Presently before the court is the September 30, 2021 Report and Recommendation of Magistrate Judge Martin Carlson (“Report”), (Doc. 10), which recommends that the *pro se* amended complaint of plaintiff Steven Meleika, (Doc. 7), raising constitutional claims under Monell¹ against defendant Monroe County pursuant to [42 U.S.C. §1983](#), be dismissed with prejudice since the plaintiff was granted leave to file an amended complaint and failed to cure the deficiencies in his original complaint which were identified in a previous Report, (Doc. 6), and failed to conform his amended

¹See [Monell v. New York City Dept. of Social Servs.](#), 436 U.S. 658 (1978). No doubt that *Monell* applies to claims of liability under §1983 against municipalities, such as Monroe County, alleged to be violating plaintiff’s constitutional rights. See [Mulholland v. Gov’t County of Berks](#), 706 F.3d 227, 237 (3d Cir. 2013) (holding that a municipality “can be held responsible as an entity when the injury inflicted is permitted under its adopted policy or custom.”).

pleading with the requirements, including Fed.R.Civ.P. 8. In his Report, Judge Carlson also explains why plaintiff's amended complaint again fails to state a claim upon which relief can be granted under Fed.R.Civ.P. 12(b)(6), and under *Monell*. Further, the Report explains why plaintiff's malicious prosecution claim is barred by Heck v. Humphrey, 512 U.S. 477, 483, 114 S.Ct. 2364 (1994). Nor does the 25th Amendment provide the plaintiff with any private right of action against state or county agencies as the Report finds.

No objections were filed to the Report by the plaintiff. Rather, in response to the Report, plaintiff filed a motion for default judgment against Monroe County, (Doc. 11), on October 4, 2021, and a notice of appeal with the Third Circuit, (Doc. 13), on October 12, 2021. On February 25, 2022, the Third Circuit dismissed plaintiff's interlocutory appeal, regarding this court's prior Order, (Doc. 9), dismissing his original complaint without prejudice, for lack of jurisdiction. (Doc. 15).

Despite the dismissal of his appeal, the plaintiff failed to file any timely objections to the Report and the time to do so has lapsed.

Based on the court's review of the record and the amended pleading in this matter, the Report will be adopted in its entirety, and plaintiff's

amended complaint, (Doc.7), will be dismissed with prejudice pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).

When no objections are made to the report and recommendation of a magistrate judge, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” [Fed.R.Civ.P. 72\(b\)](#); advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D. Pa. 2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); [M.D. Pa. L.R. 72.31](#).

The court has reviewed the Report of Judge Carlson, as well as the amended complaint, and the court will adopt the Report and dismiss the amended pleading with prejudice since the plaintiff was already afforded an opportunity to correct his pleading and it appears futile to allow him the opportunity to file a third pleading.

Additionally, the plaintiff’s motion for default judgment against Monroe County will be denied since the defendant was not yet served with any of his

pleadings because Judge Carlson was obliged to screen them prior to having them served.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The Report of Judge Carlson, **(Doc. 10)**, is **ADOPTED IN ITS ENTIRETY**;

(2) The plaintiff's amended complaint, **(Doc. 7)**, is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. §1915(e)(2)(B)(ii);

(3) The plaintiff's motion for default judgment against defendant Monroe County, **(Doc. 11)**, is **DENIED**; and

(4) The Clerk of Court is directed to **CLOSE THIS CASE**.

s/ Malachy E. Mannion

MALACHY E. MANNION
United States District Judge

DATE: March 17, 2022

21-1539-02